



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

WAGGONER GARR
ATTORNEY GENERAL

July 22, 1966

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. C-730

Re: Whether gross receipts
of Electronic Enterprises,
Inc. are subject to the
Gross Receipts Tax pro-
vided by Article 11.06,
Title 122A, Taxation-
General, Vernon's Civil
Statutes.

Dear Mr. Calvert:

In connection with your request for an opinion of this Office on the above captioned matter, we have checked the charter of Electronic Enterprises, Inc. and find that it was incorporated for the following purposes:

" . . . to purchase and sell goods, wares and merchandise; to transact any manufacturing business; to service and repair goods, wares and merchandise, to hold, use and acquire licenses, patents or processes and sell or otherwise dispose of the same; and to render common carrier mobile radio communications to the general public."

In your letter requesting this opinion, you have given us the following information with regard to Electronic's operations.

"Electronic Enterprises, Inc. is licensed as a common carrier by the Federal Communications Commission and the company operates as a central dispatch station with a hook up with Southwestern Bell Telephone Company.

"If an individual desires to have a telephone in his car, he applies to Electronic Enterprises, Inc. for this service. The company installs a telephone and he receives the services of a dispatcher. If a subscriber

wants to make a telephone call, he calls the dispatcher and the number is dialed by the dispatcher, regardless of the location."

You have furnished us with a copy of a letter from your Regional Manager in San Antonio, Texas, as well as a pamphlet which describes a similar service provided by another company. This letter states that Electronic rents car radios and collects Federal Excise Tax as a telephone service. The following are excerpts from the pamphlet.

"TWO-WAY MOBILE RADIOTELEPHONE

"Make telephone calls from your car
In addition to our telephone answering service, we are able to equip your car with a two-way mobile radiotelephone. Through our switchboard you can talk direct to any telephone anywhere. Our mobile radiotelephone operators act as secretaries too. They take messages, give information and, if you desire, keep track of your whereabouts. If you are on the move, stay in touch with a mobile radiotelephone.

".

"NO MILEAGE CHARGES!"

"Only \$3.00 per month telephone company charges when using our special equipment which serves most exchanges."

Section (1) of Article 11.06 reads, in part, as follows:

"(1) Each individual, company, corporation, or association owning, operating, managing, or controlling any telephone line or lines, or any telephones within this State and charging for the use of same, shall make quarterly, on the first days of January, April, July, and October of each year, a report to the Comptroller, under oath of the individual, or of the president, treasurer, or superintendent of such company, corporation, or

association, showing the gross amount received from all business within this State during the preceding quarter in the payment of charges for the use of its line or lines, telephone and telephones, and from the lease or use of any wires or equipment within this State during said quarter. Said individuals, companies, corporations, and associations, at the time of making said report, shall pay to the State Treasurer, and there is hereby levied upon said individuals, companies, corporations, and associations, an occupation tax for the quarter beginning on said date, . . . (Emphasis supplied throughout)

We think that Electronic is within the plain language of the statute. It controls some telephones within this state in that it directs telephone calls through the dispatcher and charges for same. It therefore should make the required reports to the Comptroller showing the gross amount received from all business within this state during the preceding quarter in the payment of charges for the use of telephone and telephones, and from the lease or use of any wires or equipment within this state during said quarter.

Even if there be deemed to be some doubt as to whether Electronic's operations fall within the provisions of the statute, we think that proper construction thereof leads to the conclusion that they do. San Antonio & A. P. Ry. Co. v. Southwestern Telegraph and Telephone Company, 93 Tex. 313, 55 S.W. 117 (1900).

S U M M A R Y

Corporations created for the purpose of providing radiotelephone service are subject to the Gross Receipts Tax provided by Article 11.06, Title 122A, V.C.S.

Yours very truly,

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APPROVED:
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